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Federal Communications Commission

**Before The**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| **In the Matter of** | ) | |
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| **Review of the Commission's Regulations Governing Television Broadcasting** | ) | **MM Docket No. 91-221** |
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| **Television Satellite Stations Review of Policy and Rules** | ) | **MM Docket No. 87-7** |
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| **Broadcast Television National Ownership Rules** | ) | **MM Docket No. 96-222** |
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| **Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests** | ) | **MM Docket No. 94-150** |
| | ) | |
| **Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry** | ) | **MM Docket No. 92-51** |
| | ) | |
| **Reexamination of the Commission's Cross-Interest Policy** | ) | **MM Docket No. 87-154** |

**To: The Commission**

# REPLY COMMENTS OF AK MEDIA GROUP, INC.


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March 21, 1997

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**To: The Commission**

## REPLY COMMENTS OF AK MEDIA GROUP, INC.

AK Media Group, Inc. ("AK Media"), licensee of KCBA(TV), Channel 35, Salinas, California, submits its Reply Comments in these proceedings[1] in support of the relaxation of the Commission's duopoly rule and to support an amendment to that rule that would permit common ownership of television stations in the same market. AK Media also submits its Reply Comments in support of a Commission policy permitting LMAs to the same extent that it permits duopolies.

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[1] AK Media presumes that the Commission's reference to Docket No. 8707 in the caption of the Second Notice of Proposed Rulemaking in FCC 94-438 was in error and that the Commission intended to refer to Docket No. 87-8.

## I. INTRODUCTION

AK Media has been the Commission licensee of television stations since 1982. AK Media currently is the licensee of five television stations: KKTV(TV) in Colorado Springs, Colorado, KGET(TV) in Bakersfield, California, KVOS(TV) in Bellingham, Washington, KFTY(TV) in Santa Rosa, California and KCBA(TV) in Salinas, California. In addition, a wholly-owned subsidiary of The Ackerley Group, Inc., WIXT TV, Inc., is the license WIXT(TV) in Syracuse, New York.[2] AK Media, as licensee of KCBA(TV), has a local marketing agreement ("LMA" or "Monterey LMA") with Harron Television of Monterey ("Harron"), licensee of KION(TV),[3] Channel 46, Monterey, California, for the Monterey-Salinas Designated Market Area ("DMA"). As a participant in an LMA in a smaller market, AK Media is in a position to provide the Commission with first-hand practical knowledge of the competitive pressures faced by television stations in many markets and how duopolies and LMAs can and do serve the public interest.

In its February 7, 1997 Comments, AK Media provided the Commission with information concerning AK Media's experience with an LMA in Monterey-Salinas which supports AK Media's conclusion that, rather than hurting competition and diversity, a duopoly or an LMA actually can increase competition and diversity. AK Media's Comments also demonstrated that Commission decisions relaxing the duopoly rule to permit duopolies and permitting LMAs to the same extent it permits duopolies are in the public interest and can increase competition and diversity. In its Comments, AK Media showed that the LMA in the Monterey-Salinas market has resulted in more and better news programming and expanded service to the communities served by the two stations operated pursuant to the LMA.

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[2] AK Media, Inc. also is a wholly-owned subsidiary of The Ackerley Group, Inc.

[3] The call letters of KION(TV), formerly KCCN-TV, were formally changed to KION(TV) on March 3, 1997.

AK Media's Comments supported the recommendations made in the Comments of the Local Station Operators Coalition. AK Media supports the Reply Comments of the Local Station Operators Coalition and will limit its own Reply Comments to particular matters related to AK Media's Monterey-Salinas LMA and to small market LMAs where its experience may be of particular assistance to the Commission.

## II. THERE IS NO BASIS FOR ARBITRARY LIMITS ON DUOPOLIES AND LMAs

Jet Broadcasting Co., Inc. ("Jet") filed Comments[4] which ask the Commission to relax the duopoly rule to permit common ownership of two UHF stations in the same market and to permit LMAs. However, Jet recommends arbitrary and irrational limits on common ownership and on LMAs: Jet proposes that the Commission prohibit common ownership of two UHF television stations in those situations in which a single entity would operate one half or more of all television stations in the market. Similarly, Jet proposes that LMAs be forbidden in those situations in which a single entity would operate one half or more of a market's television stations.

Jet's principal basis for proposing these limitations on common ownership and on LMAs is its professed concern that competition and diversity will suffer most in small television markets where there are only a few stations. However, Jet's argument is undermined by some of its own arguments in support of relaxation of the duopoly rule and in support of some television LMAs. Its proposed limits also are irrational and arbitrary, as is demonstrated by AK Media's own experience in the Monterey-Salinas market which were described in AK Media's Comments.

Jet's Comments argued that the duopoly rule should be relaxed to permit common ownership of two UHF television stations in the same market where a single entity would not operate one half

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[4] Jet filed two sets of Comments on February 7, 1997. The Jet Comments referred to in these Reply Comments are the ones filed in MM Docket No. 91-221 and MM Docket No. 87-7. The set of Comments filed by Jet in MM Docket No. 94-150, MM Docket No. 92-51 and MM Docket No. 87-154 also urge in summary fashion that the Commission prohibit LMAs in "small television markets."

or more of all television stations in the market because UHF stations are at a disadvantage with respect to VHF stations. Jet Comments at 4-5. Jet's Comments also supported the relaxation of the duopoly rule because "over-the-air television no longer dominates the 'delivered video programming market' . . . and therefore must compete with other sources of delivered video programming." Jet Comments at 5 (footnote omitted).

Jet is absolutely correct that UHF stations are at a disadvantage and that the "delivered video programming market" is no longer dominated by over-the-air television. Over-the-air television stations now compete with video programming supplied by numerous providers delivered by cable and by satellite broadcasters. This competition exists regardless of whether an over-the-air television station is licensed to a major market or a small market.

Given this competitive reality, which Jet concedes exists, Jet's argument that lack of competition and diversity in small markets somehow requires the limits it requests on duopolies and LMAs make no sense. Since over-the-air television no longer dominates the "delivered video programming market," an over-the-air television station competes with suppliers of delivered video programing besides other over-the-air television stations. Therefore, analyzing the competitive situation in a market solely in terms of over-the-air television stations is irrational.

Two stations owned by one entity in a market with four over-the-air television stations or an LMA where a single entity would operates one half or more of a market's over-the-air television stations generally will not have a adverse effect on competition because of the competition from delivered video programming suppliers which are not over-the-air television stations. Since Jet concedes that, collectively, over-the-air television stations no longer dominate the delivered video programming market, it is irrational to presume, as Jet does in its Comments, that two over-the-air television stations in a market owned or operated by the same entity would somehow dominate the local delivered video programming market.

Jet's complaint that a duopoly or LMA in a market with four or less over-the-air television stations could hamper competition and diversity by permitting the stations to focus spending on more desirable programming which attracts larger audiences, Jet Comments at 10, is astonishing. Jet cannot seriously argue that the Commission should discourage LMAs and duopolies in some markets because it is not in the public interest for over-the-air television stations to provide more desirable programming to their viewers.

Jet's argument that the Commission should impose a blanket ban on duopolies and LMAs in markets with four or fewer over-the-air television stations in order to preserve competition and diversity in smaller markets is also refuted by the history of one station's long-term dominance of the Monterey-Salinas market, which is set forth in AK Media's Comments at pp. 5 through 10. To briefly recapitulate that history, one station, KSBW(TV), Channel 8, Salinas, an NBC affiliate, has dominated news programming in the Monterey-Salinas DMA since at least 1987. For example, in 1996, KSBW(TV)'s market share of Monday through Friday local news programming was 67.8%, while the next highest rated television stations in the Monterey-Salinas DMA, KNTV(TV) and KCCN-TV, both had 8.9% market shares of Monday through Friday local news programming viewers. AK Media Comments at 6.[5]

According to Jet Broadcasting, the Commission should always presume that a duopoly or LMA in a four station market would impermissibly harm competition and diversity. However, in the Monterey-Salinas market, the dominance of KSBW(TV) in news programming is still overwhelming, even if the ratings of KCCN-TV and KCBA(TV) -- the two stations operated under an LMA -- are consolidated. For example, in 1996, KSBW(TV)'s 67.8% share of Monday through

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[5] KNTV(TV), Channel 11, San Jose, an ABC affiliate is listed as a station serving the Monterey-Salinas DMA, despite the fact that it is licensed to San Jose. If KNTV-TV were excluded from the competitive analysis, the market dominance of KSBW(TV) would be even more pronounced than it is under AK Media's analysis presented in its Comments and these Reply Comments.

Friday local news programming viewers simply overwhelmed the combined 16.7% market share of KCCN-TV and KCBA(TV). Where one station has well over a 50% market share of local news programming viewers in a four station market, it would be preposterous for the Commission to bar a duopoly or LMA involving two of that dominant station's competitors in the name of protecting competition or diversity. Yet that is exactly what Jet's proposal would do.

## III THE COMMENTS OF FRANCES DILLARD AND CYNTHIA L. AND JAMES P. McGILLEN SHOULD NOT BE CONSIDERED IN THESE PROCEEDINGS

The Commission received two comments in these proceedings which are specifically directed to support of the May 21, 1996 Petition for Emergency Relief filed by Cynthia L. and James P. McGillen (the "McGillens"), which seeks a Commission order requiring the termination of the Time Brokerage Agreement and Option Agreement entered into by AK Media and Harron.[6] One comment was from Frances Dillard, a former employee of Harron, which attacks the Monterey-Salinas LMA and urges the Commission not to "'Grandfather such an 'LMA' . . . ." Dillard Comments at 2. The other comment was from the McGillens themselves, who urge the Commission to ". . . invalidate the Harron-Ackerley LMA in the small Salinas-Monterey television market." McGillen Comments at 4.

Both the Dillard and McGillen comments request Commission action to terminate a particular LMA -- the Monterey-Salinas LMA between Harron and AK Media -- while the McGillens' Petition for Emergency Relief, which seeks Commission action invalidating this LMA, is still pending before the Commission.[7] Since the Dillard and McGillen comments are primarily focused on obtaining the relief sought in the McGillens' Petition for Emergency Relief (a

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[6] The Petition for Emergency Relief is assigned FCC Ref. No. 95051113.

[7] Although the comments of Dillard and the McGillens addressed a matter currently pending before the Commission (the Petition for Emergency Relief) neither Dillard nor the McGillens served a copy of their comments on AK Media.

Commission order requiring Harron and AK Media to terminate the Monterey-Salinas LMA), the Commission should not consider the Dillard and McGillens comments in the instant rulemaking proceedings. To the extent that the Dillard and McGillens comments are considered by the Commission, that consideration should occur in ruling on the McGillens' Petition for Emergency Relief. AK Media already has addressed the principal issues raised by the Dillard and McGillen comments in its responses to the Petition for Emergency Relief and therefore will not address the Dillard and McGillens comments in its Reply Comments.

## IV. CONCLUSION

AK Media's experience with an LMA in the Monterey-Salinas market supports the conclusion that the time has come for a significant relaxation of the Commission's television duopoly rule. AK Media's experience operating a small market LMA has shown that in some markets the programming of two television stations by one entity may be the only means for injecting competition into a market where virtually no competition exists. In such circumstances, the creation of a television LMA, and if allowed, the creation of a television duopoly, will increase competition in local markets, not decrease it.

Therefore, AK Media requests that the Commission adopt the recommendations of the Local Television Station Operators Coalition as follows:

- Amend the duopoly rule to consider two stations in the same DMA, but with no Grade A contour overlap, as serving two separate markets.
- Amend the duopoly rule to permit common ownership of two television stations in the same market, provided that at least one of the two stations is a UHF station.
- Grandfather all LMAs permanently.
- Permit renewal and transfer of all grandfathered LMAs.
- Continue to permit LMAs, regardless of changes in the Commission's attribution or ownership rules.

AK Media urges the Commission to reject the arbitrary and irrational limitations on duopolies and LMAs proposed by Jet Broadcasting, These limitations are inconsistent with Jet's own assertion that over-the-air television no longer dominates the delivered video programming market. Jet's proposed limitations also ignore the reality that one station in a small market may so dominate that market that a duopoly or LMA may be the only way to introduce any over-the-air competition into that market.

Finally, AK Media urges the Commission not to consider in these rulemaking proceedings the comments of Dillard and the McGillens, which focus on requesting Commission action against the Monterey-Salinas LMA in which AK Media is a participant and which already is the subject of the McGillens' Petition for Emergency Relief.

Respectfully submitted,

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March 21, 1997

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I hereby certify that on March 21, 1997, true copies of the foregoing Reply Comments of AK Media Group, Inc. were mailed, first class U.S. mail postage pre-paid, to the following:

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